

Message Text

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ACTION ARA-20

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FM AMEMBASSY PANAMA

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E.O. 11652: N/A

TAGS: ETRD, PN

SUBJECT: GOP-UNITED BRANDS AGREEMENT

REF: PANAMA 5188

FOLLOWING IS EMBASSY'S INFORMAL TRANSLATION OF GOP-UNITED
BRANDS AGREEMENT TRANSMITTED REFTEL:

1. THE GOVERNMENT OF PANAMA AGREES THAT WITHIN A
PERIOD NO GREATER THAN 15 DAYS FROM THE DATE OF RESUMP-
TION OF SHIPMENTS, IT WILL ESTABLISH A NEW BANANA EXPORT
TAX LEVEL. THE REFERENCED LEVEL WILL BE EQUIVALENT TO
THE UNIFORM EXPORT TAX AGREED UPON AND IMPLEMENTED BY
UPEB IN ITS SEPTEMBER 17, 1974 MEETING; IT BEING UNDER-
STOOD THAT THE UPEB TAX IN QUESTION WILL BE BASED ON THE
UNIFORM TAX AGREED UPON AND IMPLEMENTED BY THOSE COUNTRIES
WITH THE GREATEST PRODUCTION CAPACITY. IN CASE THE MEETING
DOES NOT RESULT IN A UNIFORM TAX, THE GOVERNMENT OF
PANAMA WILL UNILATERALLY FIX A NEW TAX LEVEL IN ORDER
TO MAKE THE PANAMANIAN BANANA INDUSTRY COMPETITIVE WITH
OTHER IMPORTANT BANANA PRODUCING COUNTRIES. IT IS AGREED
THAT WHEN THE NEW EXPORT TAX ENTERS INTO FORCE,HSAND FOR
NO MORE THAN Q5 DAYS FROM THE DATE OF RESUMPTION OF EX-
PORTS UNTIL THE SAID NEW TAX ENTERS INTO FORCE, THE
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COMPANY WILL PAY 60 DAYS AFTER THE DATE OF EACH SHIPMENT

AN AMOUNT EQUAL TO THE NEW UPEB TAX DESCRIBED ABOVE, THE DIFFERENCE BETWEEN THE UPEB TAX AND THE TAX OF ONE BALBOA PER BOX EXPORTED DURING THE 15 DAYS PERIOD WILL BE HANDLED IN THE FOLLOWING MANNER:

A. IN CASE THE COMPANY AND THE GOVERNMENT AGREE WITHIN A REASONABLE PERIOD OF TIME ON THE TRANSFER AND SALE OF ASSETS HELD BY THE COMPANY WITHIN THE REPUBLIC OF PANAMA, THE COMPANY WILL CREDIT THAT AMOUNT TO THE GOVERNMENT AS PART OF THE AGREED SALES PRICE.

B. OTHERWISE, THE PARTIES WILL AGREE UPON THE FORM OF PAYMENT OF SUCH SUMS.

C. IT IS UNDERSTOOD THAT PAYMENT OF THE AMOUNT WHICH EXCEEDS THE PREVIOUSLY DEFINED NEW UPEB TAX, WILL NOT BE PAID AS AN EXPORT TAX BUT RATHER AS PART OF THE PURCHASE PRICE FOR THE COMPANY'S ASSETS OR FOR ANY OTHER PURPOSE WHICH MAY BE AGREED UPON BETWEEN BOTH PARTIES.

2. WITH REGARD TO THE UNPAID TAX OF ONE DOLLAR PER BOX FOR SHIPMENTS MADE DURING THE 60 DAYS PERIOD PRIOR TO THE SUSPENSION OF EXPORTS, THE COMPANY ACCEPTS TO PAY SAID AMOUNT AS FOLLOWS:

A. THE SUM OF B/1,800,000 IN CASH AND WITHIN THE NEXT SEVEN(7) DAYS AND,

B. THE BALANCE WILL BE USED IN FIRST INSTANCE AS A CREDIT AGAINST THE SALE PRICE OF THE COMPANY'S ASSETS AND, IF AGREEMENT ON THE SALE IS NOT REACHED, THE COMPANY WILL AGREE WITH THE GOVERNMENT OF PANAMA ON THE FORM OF PAYMENT.

3. THE GOVERNMENT OF PANAMA AND THE COMPANY AGREE THAT THEY RESERVE ALL THEIR LEGAL RIGHTS AND CLAIMS, UNLESS EXPRESSLY STATED TO THE CONTRARY HEREIN. IN PARTICULAR IT IS AGREED THAT WHATEVER AMOUNT THE COMPANY HAS PAID OR AGREED TO PAY AS AN EXPORT TAX WILL BE WITHOUT PREJUDICE TO THE COMPANY'S CHARGE BEFORE THE COMPETENT COURT THAT SUCH TAXES WERE FIXED OR ASSESSED IMPROPERLY.

4. THE COMPANY WILL INITIATE NEGOTIATIONS WITH ITS ASSOCIATE PRODUCERS REGARDING AN INCREASE IN THE PRICE PER BOX WHICH WILL COVER THE INCREASE IN COSTS AND COMMITS IT-
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SELF TO MAKE THIS INCREASE RETROACTIVE TO THE DATE OF THE FIRST SHIPMENT. THE GOVERNMENT ACCEPTS IN GOOD FAITH THE COMPANY'S PROMISE TO THE EFFECT OF REACHING AN EQUITABLE SOLUTION REGARDING SUCH AN INCREASE. THESE NEGOTIATIONS WILL TAKE PLACE IN THE PRESENCE OF GOVERNMENT OFFICIALS IF THE GOVERNMENT SO WISHES.

5. THE GOVERNMENT WILL MAKE NO CLAIM REGARDING ANY

TAX OR DAMAGES WHICH IT MAY HAVE SUFFERED BY VIRTUE OF THE SUSPENSION OF SHIPMENTS (EXPORT TAX, WHARFING AND RAILROAD FEES).

6. THE PARTIES HAVE AGREED TO INITIATE AS SOON AS POSSIBLE THE NEGOTIATIONS WHICH REFER TO THE TRANSFER OR SALE OF THE ENTERPRISE'S ASSETS IN THE REPUBLIC OF PANAMA TO THE PANAMANIAN GOVERNMENT OR, AS AN ALTERNATIVE, WITH REFERENCE TO THE CHANGE IN THE FORM OF THE COMPANY'S PRESENCE IN PANAMA WITH THE VIEW OF AVOIDING POSSIBLE FUTURE DIFFICULTIES (FRICCIONES); THE PRESENT AGREEMENT DOES NOT CONTEMPLATE THIS OTHER ALTERNATIVE.

7. THE COMPANY WILL PAY ALL VALID LABOR CLAIMS WHICH REFER TO THE TOTALITY OF ITS EMPLOYEES OR TO THOSE EMPLOYEES OF OTHER COMPANIES WHICH ACCORDING TO PANAMANIAN LABOR LAWS HAVE A VALID CLAIM AGAINST THE COMPANY.

SEPTEMBER 3, 1974

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